

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rule making related to floodplain permitting for bridges and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 72, “Criteria for Approval,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 455B.275(9), 455B.276(1) and 455B.278(1).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.262, 455B.264(3) and 455B.275.

Purpose and Summary

Chapter 72 regulates, among other structures, bridges constructed in a floodplain. Currently, the permitting rules distinguish between new bridges and replacement bridges. Replacement bridges are not allowed to increase backwater at all, whereas new bridges can cause up to one foot of backwater. Backwater is upstream flooding caused by constricting the flow of water.

A replacement bridge may cause an increase in backwater for justifiable reasons. For instance, backwater may increase when the bridge is redesigned to lessen the likelihood of a road closure during high water events. Preventing high water from overtopping the roadway increases the amount of water flowing under the bridge. This can result in minor (up to several inches of) increased backwater.

Under the current rules, the Department of Natural Resources (Department), on behalf of the Commission, has issued many design waivers permitting a replacement bridge under conditions that are approved by rule for a new bridge. This is burdensome and costly for permittees and time consuming for staff. The proposed amendment will subject new bridges and replacement bridges to the same standards. This change will prevent the need for waivers in the future.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 12, 2022. Comments should be directed to:

Jonathan Garton
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: jonathan.garton@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Jonathan Garton via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the public hearing must submit a request to Jonathan Garton prior to the hearing to facilitate an orderly hearing.

April 12, 2022
2 to 3 p.m.

Via video/conference call

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend paragraph **72.1(2)“a”** as follows:

a. Backwater Q100.

(1) The maximum allowable Q100 backwater for new bridges and road embankments is 1.0 foot.

~~(2) The maximum allowable Q100 backwater for replacement bridges and roadway embankments is the lesser of the following: Q100 backwater for the existing bridge and road embankment or 1.0 foot.~~

~~(3) (2)~~ (2) For a new bridge and road embankment located within a stream reach for which the Federal Emergency Management Agency has published a detailed Flood Insurance Study which includes a floodway, the backwater for Q100 shall not exceed the surcharge associated with the delineation for the floodway at that location.

(4) (3) In no case shall the Q100 backwater effects of a bridge or road embankment reduce the existing level of protection provided by certain flood control works, unless equivalent remedial measures are provided.